

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Tanner	Team: Team # 5	CCRB Case #: 200716527	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/07/2007 4:40 PM	Location of Incident: § 87(2)(b) and the 73rd Precinct stationhouse.	Precinct: 73	18 Mo. SOL 5/7/2009	EO SOL 5/7/2009	
Date/Time CV Reported Wed, 11/07/2007 4:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/13/2007 4:19 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Obrien	29288	928886	NARCBBN
2. POM William Warren	30397	933467	NARCBBN
3. DT3 Christopher Castle	01475	928041	NARCBBN
4. SGT John Hopkins	01935	904167	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Brian Naughton	07496	928850	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM William Warren	Abuse: In front of § 87(2)(b) in Brooklyn, PO William Warren stopped § 87(2)(b)	§ 87(2)(b)
B.POM Robert Obrien	Abuse: In front of § 87(2)(b) in Brooklyn, PO Robert O'Brien stopped § 87(2)(b)	§ 87(2)(b)
C.POM William Warren	Force: In front of § 87(2)(b) in Brooklyn, PO William Warren used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Robert Obrien	Force: In front of § 87(2)(b) in Brooklyn, PO Robert O'Brien used physical force against § 87(2)(b)	§ 87(2)(b)
E.SGT John Hopkins	Force: In front of § 87(2)(b) in Brooklyn, SGT John Hopkins used physical force against § 87(2)(b)	§ 87(2)(b)
F.DT3 Christopher Castle	Force: In front of § 87(2)(b) in Brooklyn, DT3 Christopher Castle used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G.SGT John Hopkins	Abuse: In front of § 87(2)(b) in Brooklyn, SGT John Hopkins threatened § 87(2)(b) with the use of force.	
H.POM William Warren	Abuse: Inside of the 73rd Precinct stationhouse, PO William Warren threatened § 87(2)(b) with the use of force.	
I.POM William Warren	Discourtesy: Inside of the 73rd Precinct stationhouse, PO William Warren spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(b) .	
J.SGT John Hopkins	Abuse: Inside of the 73rd Precinct stationhouse, SGT John Hopkins authorized the strip-search of § 87(2)(b)	

### Synopsis

On November 7, 2007, § 87(2) § 87(2)(b) file her complaint via the Internal Affairs Bureau of the NYPD by calling 911. The complaint was referred to the CCRB on November 13, 2007, with § 87(2)(b) § 87(2)(b) identified as the victim.

On November 7, 2007, at approximately 4:40, § 87(2)(b) was arrested in the vicinity of the intersection of § 87(2)(b) in Brooklyn by the officers assigned to Narcotics Borough Brooklyn North's 73<sup>rd</sup> Precinct module. § 87(2)(b) § 87(2)(b) observed this encounter. § 87(2)(b) alleged that he was stopped by two officers, determined to be PO William Warren and PO Robert O'Brien, inside of a Family Dollar store on § 87(2)(b) (allegations A and B). Once § 87(2)(b) and the officers left the store, they attempted to place § 87(2)(b) in handcuffs and used physical force to do so (allegations C and D). PO Warren and PO O'Brien were joined in their attempt to handcuff § 87(2)(b) by SGT John Hopkins and DT3 Christopher Castle (allegations E and F). During the struggle, SGT Hopkins stated to § 87(2)(b) "If you don't turn around, I'm going to spray you in the face with mace," (allegation G). § 87(2)(b) was handcuffed, placed in an unmarked van, and transported to the 73<sup>rd</sup> Precinct stationhouse by DT3 Castle and DT3 Brian Naughton. At the 73<sup>rd</sup> Precinct, § 87(2)(b) alleged that he was searched by PO Warren and that he believed PO Warren came close to touching his anus through his pants. § 87(2)(b) pushed PO Warren with his body and PO Warren is alleged to have said, "I'm going to hit you," (allegation H). During the search, in which PO Warren recovered four units of crack cocaine, PO Warren is alleged to have said, "I could have shot you. I could have kicked your ass because you gave me a hard time outside," (allegation I). § 87(2)(b) was then strip searched in a cell in the back of the 73<sup>rd</sup> Precinct stationhouse. This strip-search was authorized by SGT John Hopkins and documented by him in the command log (allegation J).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) provided a statement while speaking with a 911 operator and in filing her complaint with IAB on November 7, 2007. She provided an additional telephone statement on January 14, 2008. § 87(2)(g)

§ 87(2)(b)'s call to 911 was very brief and in it she stated that at the corner of § 87(2)(b) § 87(2)(b) in Brooklyn, "The cops are beating up a guy. Mother fuckers!" § 87(2)(b) then disconnected with the operator. The operator then filed a complaint with IAB on § 87(2)(b)'s behalf.

On November 7, 2007, at approximately 4:40pm, § 87(2)(b) and her daughter § 87(2)(b) § 87(2)(b) exited the § 87(2)(b) Grocery store on § 87(2)(b) in Brooklyn. Across the street, § 87(2)(b) observed three or four large white males physically struggle with a small black male, determined to be § 87(2)(b). The white males yelled out to § 87(2)(b) "What do you have?" § 87(2)(b) and § 87(2)(b) crossed the street and § 87(2)(b) called out to the white males, "You don't have to do that," or something to that effect. § 87(2)(b) also told § 87(2)(b) not to fight back, although he was not and was just wriggling his body. At one point, one of the white males pushed § 87(2)(b)'s head against a wall. § 87(2)(b) was then handcuffed and placed in a van. One of the white males at the scene told § 87(2)(b) "Mind your business." § 87(2)(b) was unable to describe the white male officers or attribute specific actions to particular officers. During her telephone statement, § 87(2)(b) stated that she did not want to get involved in the investigation because she couldn't remember much about the incident.

At the time that § 87(2)(b) provided her telephone statement, the victim, § 87(2)(b) had already provided a statement in connection with the incident. § 87(2)(g)

### Results of Investigation

#### Victim Statement

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) old black male. He is five feet and six inches tall and weighs one hundred and sixty pounds. He has black hair and brown eyes. He currently resides at § 87(2)(b) § 87(2)(b), and has lived there for the past § 87(2)(b). § 87(2)(b) provided a statement via

telephone on November 16, 2007, and was interviewed at the CCRB on November 27, 2007. § 87(2)(b), § 87(2)(g)

On November 7, 2007, at approximately 4:40pm, § 87(2)(b) and his girlfriend § 87(2)(b) went to the § 87(2)(b) supermarket located in the vicinity of § 87(2)(b) in Brooklyn. Initially, § 87(2)(b) denied that he or § 87(2)(b) spoke with anyone else during the two block walk from § 87(2)(b)'s home to the § 87(2)(b) grocery store. When asked how he came to be in possession of crack cocaine he admitted to possessing later in the interview, § 87(2)(b) stated that outside of § 87(2)(b)'s apartment, he purchased crack cocaine from a dealer with whom he is acquainted. Instead of returning home to drop off the crack cocaine, he continued to the grocery store. § 87(2)(b) denied that he was under the influence of narcotics or alcohol. Once at the § 87(2)(b) supermarket, § 87(2)(b) gave § 87(2)(b) money to purchase groceries. He purchased necessary groceries, but after leaving, realized that he had not purchased flour and oil. Instead of returning to the § 87(2)(b) supermarket, § 87(2)(b) went across the street to purchase those items from a Family Dollar store located across the street.

At Family Dollar, as § 87(2)(b) was exiting the aisle with the oil, walking to the cash register, he looked up and saw two officers standing in front of him by the entrance to the store, near the cash register. Closest to the cash register was a white male officer, determined to be PO William Warren. A second, taller, white male officer, determined to be PO Robert O'Brien, was closest to the entrance to the store. § 87(2)(b) noticed that the officers were looking at him. PO Warren began to laugh, and said, "I know you. I got you." § 87(2)(b) asked, "You got me for what?" PO Warren said, "Armed robbery." § 87(2)(b) began to laugh and said, "If this was § 87(2)(b) ago, yeah, you probably could have had me for armed robbery." PO Warren then said that he had § 87(2)(b) for two outstanding tickets. § 87(2)(b) told PO Warren, "I know you ain't come in here to tell me about no ticket." PO Warren said, "No, I got you for armed robbery." PO Warren asked § 87(2)(b) for some identification, which § 87(2)(b) presented. PO Warren then said that he was waiting for the person who made the complaint against him to come to make an identification outside of the store. § 87(2)(b) denied that he robbed anyone, and admitted in the interview that he argued with PO Warren a little. PO Warren then asked him, "Can I check you?" § 87(2)(b) said yes, and PO Warren patted him down, patting over his pockets. § 87(2)(b) told PO Warren that he had a razor in his back right pants pocket. § 87(2)(b) described this razor as a carpet razor or a box cutter. PO Warren felt the razor in § 87(2)(b)'s pocket, but didn't do anything to remove it. § 87(2)(b) stated that PO Warren didn't find a gun or anything. PO Warren stated that he knows § 87(2)(b) for selling drugs. § 87(2)(b) told PO Warren that this was a lie because he had nothing like that on his record. § 87(2)(b) admitted in his interview that he has only armed robbery and assault charges on his record. § 87(2)(b) told PO Warren, "You ain't going to get me for no drug sales because that's not me."

PO Warren asked § 87(2)(b) to come outside of the store with him and PO O'Brien. § 87(2)(b) said that he would. § 87(2)(b) carried his groceries out of the store, and PO Warren said to him, "Let me call this person and we're going to see if we got you for armed robbery. If not, then I apologize, and you can go on your way." § 87(2)(b) said, "Ok." § 87(2)(b) described PO Warren's demeanor at this time as nice. § 87(2)(b) saw a third white male officer, not identified by this investigation, standing next to the officers' van, parked in front of the Family Dollar store. At this time § 87(2)(b) began to look across the street to try and find § 87(2)(b) who was still at the § 87(2)(b) supermarket. He wanted to let her know what was going on with the officers. The next thing § 87(2)(b) knew, PO Warren, who had been standing directly in front of him, had grabbed his right hand and "slapped" a bracelet of his handcuffs around his right wrist. § 87(2)(b) described PO Warren as having squeezed the handcuff very tightly. PO Warren said to him, "We got you for armed robbery. Lay on the ground." § 87(2)(b) refused. PO Warren then said to him, "No, we don't have you for armed robbery, we got you for drug sales." As PO Warren said this, he pulled down on the handcuffs attached to § 87(2)(b)'s right wrist. PO Warren held onto the bracelet that was not attached to § 87(2)(b) and tugged down on it repeatedly. § 87(2)(b) complained to PO Warren that he was hurting him. PO Warren again told § 87(2)(b) to lie down on the ground. § 87(2)(b) again refused. As PO Warren tugged on the handcuffs, § 87(2)(b) took steps back until his back was up against the façade of the Family Dollar store, just to the side of the front entrance.

At this point, pedestrians started to gather and were complaining to the officers that they were arresting § 87(2)(b). PO Warren told § 87(2)(b) "If you don't turn around, I'm going to spray you in the face with mace." § 87(2)(b) responded, "Officer, there's no reason for you to be spraying me in the face with mace, and you hurting my wrist." Throughout this time, PO Warren was tugging down on the bracelet of the handcuffs not attached to § 87(2)(b)'s right wrist. His left wrist was still free at this time and PO Warren had not made any contact with it.

PO O'Brien and the unidentified third white male officer, who was present throughout the incident, just looked at PO Warren throughout this exchange. PO O'Brien had been standing to the left side of § 87(2)(b) but he just watched as he and PO Warren struggled over the one bracelet on his right wrist. While PO Warren and § 87(2)(b) were struggling over the handcuffs and whether or not he would get on the ground, § 87(2)(b) saw an unidentified black female, who stated that she would call Internal Affairs about what was going on. She was standing near PO Warren after exiting the check cashing business located next to the Family Dollar store. A crowd of ten to fifteen people started to gather because of the incident. PO O'Brien approached § 87(2)(b) and PO Warren and said, "Look, give me your wrist so I can handcuff you." § 87(2)(b) complied, and turned around, allowing PO Warren to place the other bracelet on his left wrist. § 87(2)(b) denied that he was resisting arrest, and explained that he was in so much pain from the bracelet around his right wrist he was unable to move his arms. After PO O'Brien finished placing § 87(2)(b)'s left wrist in the handcuffs, PO Warren said to him, "You was trying to resist arrest. I could have shot you." § 87(2)(b) said to him, "Shot me for what?" PO Warren said, "Because you were trying to reach for a razor." § 87(2)(b) denied he ever reached for a razor. § 87(2)(b) described his struggle with PO Warren over the handcuff as lasting for about five or six minutes. It was only once the crowd started to develop that PO O'Brien asked § 87(2)(b) for his left hand. Once in handcuffs, PO Warren removed the razor from § 87(2)(b)'s back pocket.

PO Warren held onto § 87(2)(b) by his shoulders and pushed him through the doors of the van, inside of it. § 87(2)(b) landed on the far side of the van, near the vehicle's rear tire, between the seats of the van, on his left side. He picked himself up and took a seat in the van. In the van, § 87(2)(b) complained about his wrist all the way to the stationhouse. Also inside of the van was another man, identified as § 87(2)(b) also under arrest. PO O'Brien drove the van to the stationhouse, and PO Warren was also present in the van. § 87(2)(b) did not believe that the unidentified third white male officer was present in the van.

Inside of the 73<sup>rd</sup> Precinct stationhouse, PO Warren escorted § 87(2)(b) from the police van into the Precinct stationhouse. § 87(2)(b) was searched up against a wall inside of a cell in the stationhouse by PO Warren. § 87(2)(b)'s handcuffs remained on. PO Warren searched § 87(2)(b)'s pants pockets and coat. Inside of one of § 87(2)(b)'s pants pockets, PO Warren recovered "four cracks." § 87(2)(b) explained to PO Warren that he had this crack so he and his girlfriend could get high. During this search, § 87(2)(b) stated that PO Warren put his fingers in § 87(2)(b)'s "ass" through § 87(2)(b)'s pants. § 87(2)(b), although still handcuffed, pushed PO Warren away with his body for touching his backside. Once § 87(2)(b) pushed PO Warren away, PO Warren said, "I'm going to hit you." During this search, PO Warren said to § 87(2)(b) "I could have shot [you]. I could have kicked your ass, because you gave me a hard time outside." § 87(2)(b) again reiterated that it was cold outside and that that was the reason he did not lay down.

After PO Warren had finished the search of § 87(2)(b)'s clothing and recovered the crack cocaine, PO Warren ordered him to remove all of his clothing. § 87(2)(b) removed all of his clothing. PO Warren told him that he wanted to look under his feet and at his scrotum and between his buttocks. PO Warren did not touch him at any point and only observed these parts of § 87(2)(b)'s body. § 87(2)(b) stated that while there were other people in the other cells of the stationhouse, he could not see them while the search was occurring. After PO Warren concluded this search of § 87(2)(b) his clothes were returned to him. § 87(2)(b) was then processed by PO O'Brien and taken to Brooklyn Central Booking.

### Witness Statements

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) old black female. She is five feet and six inches tall and weighs one hundred and thirty five pounds. She has brown hair and brown eyes. She currently resides at § 87(2)(b). She has lived at this address § 87(2)(b). § 87(2)(b) provided only one statement, when she was interviewed at the CCRB on November 27, 2007.

On the way to the § 87(2)(b) supermarket they had not spoken to anyone. Prior to this incident § 87(2)(b) and § 87(2)(b) had been drinking. § 87(2)(b) had consumed a can of beer and that she wasn't intoxicated to the point where she couldn't see or hear. She stated that she had consumed this beer approximately an hour and a half before the incident. § 87(2)(b) had consumed a wine cooler at the same time that § 87(2)(b) consumed the beer. § 87(2)(b) admitted that she had smoked crack cocaine a couple of hours before the incident, but noted that enough time had elapsed that she was ready to smoke

crack cocaine again. She also stated that § 87(2)(b) had not smoked crack cocaine with her prior to the incident. However, § 87(2)(b) was in possession of crack cocaine at the time of the incident.

§ 87(2)(b) exited the § 87(2)(b) grocery store after she purchased her groceries. Once outside of the grocery store, she observed § 87(2)(b) struggling with a white male police officer, identified as PO William Warren, in front of the Family Dollar store. A white male officer that the investigation has been unable to identify was nearby. § 87(2)(b) heard § 87(2)(b) yell, "It's too tight, it's too tight." PO Warren said, "Lay on the ground. Get down. Get down on the ground." § 87(2)(b) told the officer that he was not going to get on the ground. PO Warren had one bracelet of a pair of handcuffs on § 87(2)(b)'s right arm. PO Warren was pulling on the other bracelet of the handcuffs attached to § 87(2)(b)'s right arm, causing § 87(2)(b)'s arm to swing. § 87(2)(b) was not sure which arm PO Warren used to hold on to the handcuffs attached to § 87(2)(b)'s right arm. § 87(2)(b) described PO Warren as "jerking" § 87(2)(b)'s right arm, in an attempt to get it behind his back. PO Warren was trying to get a hold of § 87(2)(b)'s left arm, but failed to do so even though his left arm was just down by his side. § 87(2)(b) stated that she was not sure whether PO Warren ever grabbed § 87(2)(b)'s left arm. Throughout this incident, § 87(2)(b) was crossing the street, approaching § 87(2)(b) and the other officers.

After five or six seconds, another white male officer, determined by the investigation to be PO O'Brien, asked § 87(2)(b) to put his left arm behind his back and let the officer handcuff him. § 87(2)(b) complied and was handcuffed by PO O'Brien. While § 87(2)(b) and PO Warren had been struggling, PO O'Brien had been standing only a couple of feet away from § 87(2)(b). By the time that PO O'Brien placed the other handcuff on § 87(2)(b), § 87(2)(b) had made her way across the street, to the same side of the street as § 87(2)(b).

§ 87(2)(b) next saw PO O'Brien put § 87(2)(b) in the van right after he had been handcuffed. § 87(2)(b) described PO O'Brien as "throwing" § 87(2)(b) in the van. She clarified that the unidentified white male officer held onto § 87(2)(b)'s handcuffs and put him in the van because § 87(2)(b) was cooperating with the officer. § 87(2)(b) wasn't able to see what happened once § 87(2)(b) entered the van as she started to walk back across the street towards the § 87(2)(b) supermarket, away from the van, as soon as § 87(2)(b) was placed in the van. Once § 87(2)(b) was in the van, it drove off. She had planned on going to the stationhouse to retrieve § 87(2)(b)'s belongings, but once she called § 87(2)(b)'s mother to inform her that he had been arrested, his family went to the stationhouse to claim his belongings.

Because of the noise of § 87(2)(b)'s yelling, a crowd formed during the incident. § 87(2)(b) stated that she did not know the size of the crowd. When asked if it was more than five, ten, or fifteen people, she stated that there were more than ten people. She explained that § 87(2)(b) is a busy street. § 87(2)(b) admitted that she knew a couple of the people she saw in the crowd, but that she didn't want to give their names without their permission. Two female employees of Family Dollar and the store security guard came to the door of the store and watched the incident.

§ 87(2)(b) is a black female § 87(2)(b) located on § 87(2)(b). She currently resides at § 87(2)(b) in Brooklyn. § 87(2)(b) provided one statement during an interview § 87(2)(b) on February 1, 2008.

On November 7, 2007, at approximately 4:40pm, § 87(2)(b). Two police officers wearing plainclothes entered the store and "grabbed a guy." The officers and the man, determined to be § 87(2)(b) then exited the store together. § 87(2)(b) did not recall what § 87(2)(b) looked like other than to say that he was black. § 87(2)(b) was also unable to describe the officers other than to say that they were white. § 87(2)(b) was on line in the store, paying for his items. § 87(2)(b) was § 87(2)(b) at a register different from the one where § 87(2)(b) was paying for his items. § 87(2)(b) was approximately 20 feet from him. § 87(2)(b) did not hear anything said between the officers and § 87(2)(b). § 87(2)(b). She did not really notice anything until she saw the officers grab § 87(2)(b). She heard a rumbling and she saw the officers grab him and search him. § 87(2)(b) identified the officers as police officers because they searched § 87(2)(b) and grabbed him. § 87(2)(b) was asked if both officers touched § 87(2)(b). § 87(2)(b) stated that she did not know, but she stated that one officer did search § 87(2)(b). § 87(2)(b) described one officer as patting down § 87(2)(b). § 87(2)(b) could not recall anything in particular about that officer, other than that that officer wore jeans. § 87(2)(b) could not recall if the other officer wore jeans.

§ 87(2)(b) had his arms behind his back when he exited the store. § 87(2)(b) was asked if the officers held his arms behind his back. She stated that she could not recall and that she could not recall if the black male was in handcuffs. The officers picked up the black male's bags and quickly exited the store. § 87(2)(b) did not observe what happened after that. She was unaware of anyone watching what occurred outside of the store. The store was crowded at that time so none of the employees could go watch. § 87(2)(b) did not recall any police cars coming and could not recall anything else about the incident. § 87(2)(b) was not able to recall anything to differentiate the officers from one another.

#### **Note Concerning Additional Civilian Witnesses**

On January 9, 2008, § 87(2)(b), a § 87(2)(b) was contacted via telephone. He stated that he had no recollection of the incident. On January 10, 2008, § 87(2)(b), a § 87(2)(b) was contacted via telephone. He stated that he had no recollection of the incident.

Attempts were made to contact § 87(2)(b) (the prisoner already in the prisoner van at the time of § 87(2)(b)'s arrest), § 87(2)(b) (the daughter of § 87(2)(b) and § 87(2)(b) § 87(2)(b)). Initial efforts to contact these witnesses were unsuccessful and § 87(2)(b), § 87(2)(g)

#### **Officer Statements**

PO William Warren, Narcotics Borough Brooklyn North, 73<sup>rd</sup> Precinct Module (Subject Officer)  
Arrest Report, § 87(2)(b)

The details section of this arrest report, as prepared by PO Warren, reads as follows, "At t/p/o deft was observed exchanging a quantity of crack cocaine for USC to unapprehended other. Deft did swing and flail his arms preventing officers from handcuffing him. During struggle deft did attempt to retrieve knife from defts person. SILA deft possessed a quantity of crack cocaine." The arrest report notes that physical force was used in order to restrain/control/remove.

#### **Memo Book and CCRB Statement**

PO Warren, a § 87(2)(b) old white male, is five feet and nine inches tall and weighs two hundred and twenty pounds. PO Warren has brown hair and brown eyes. He was interviewed at the Civilian Complaint Review Board on January 8, 2008.

On November 7, 2007, PO Warren worked from 10:33am to 7:00pm. PO Warren was assigned as an investigator of narcotics activity. PO Warren worked with the 731 module team and his partner was PO Robert O'Brien. He was in plainclothes and was assigned to an unmarked motor vehicle. PO Warren made entries in his memo book regarding this incident. PO Warren noted that at 4:45pm he had one individual, § 87(2)(b), under arrest § 87(2)(b) at the corner of § 87(2)(b).

On November 7, 2007, at approximately 4:40pm, PO Warren observed § 87(2)(b) make a drug transaction in front of a Family Dollar store on § 87(2)(b) between § 87(2)(b) and § 87(2)(b). § 87(2)(b) who had been standing in front of the store, was approached by an individual with money in his hand. The individual handed § 87(2)(b) money and § 87(2)(b) after looking around, took the money and placed it in his pocket, after which he handed the individual an object. The individual then walked off. PO Warren and PO O'Brien observed this from across the street where they were seated in an unmarked vehicle with tinted windows. PO Warren was seated in the driver's seat of the vehicle and observed the transaction through his side window. PO Warren and PO O'Brien then approached the individuals. Because the buyer had left the scene, PO Warren and PO O'Brien approached just the dealer, § 87(2)(b).

PO Warren approached § 87(2)(b) who was located on the street in the same location as where they observed him make the transaction. PO Warren said, "Police. Don't move. Put your hands behind your back. You're under arrest." § 87(2)(b) reached towards his waistband to grab an object out of his jacket pocket. PO Warren and his partner both initially thought that § 87(2)(b) was going to pull a gun out and PO Warren and PO O'Brien then each grabbed one of § 87(2)(b)'s arms. PO O'Brien grabbed his right arm, the arm with which § 87(2)(b) was attempting to grab the object. § 87(2)(b) attempted to pull a box cutter out of his pocket to try and stab PO Warren and PO O'Brien. PO Warren and PO O'Brien continued to struggle and PO Warren ordered § 87(2)(b) "Police. Stop resisting. Stop resisting. Put your hand

behind your back.” PO Warren denied that he ever said, “If you don’t turn around, I’m going to spray you in the face with mace.”

During the struggle, PO Warren observed the butt end of the box cutter protruding from the pocket as § 87(2)(b) tried to bring it out. As PO Warren and PO O’Brien began to succeed in pulling § 87(2)(b)’s hands behind his back, the prisoner van showed up at the location. DT3 Christopher Castle exited the van and assisted PO Warren and PO O’Brien. PO Warren stated that because there was already a prisoner in the van, he believed that only one officer actually exited the vehicle. DT3 Castle utilized his handcuffs and DT3 Castle and PO Warren were able to actually place the handcuffs on § 87(2)(b) while PO Warren and PO O’Brien pulled his arms back into a position where he could be handcuffed. There was a significant period of time between placing the two bracelets of the handcuffs on § 87(2)(b)’s wrists. § 87(2)(b)’s resistance to the officers did not stop after the first bracelet was placed on his wrist. During the time between handcuffing one wrist and the other, PO Warren only held onto the wrist/forearm of § 87(2)(b)’s arm and not the loose bracelet. PO Warren stated that to just hold onto the bracelet is dangerous and goes against his training. PO Warren stated that he did not have a tug-of-war with § 87(2)(b). The only force PO Warren used in arresting § 87(2)(b) was in pulling his arms behind his back. PO Warren’s hands were only on § 87(2)(b)’s arms for the duration of the struggle. § 87(2)(b) never went to the ground, nor did PO Warren order him to get on the ground. After the struggle, PO Warren recovered the box cutter from § 87(2)(b)’s pocket immediately after § 87(2)(b) was handcuffed. PO Warren then frisked § 87(2)(b) and found nothing else on his person at that time. PO Warren was asked about the involvement of civilians at the scene of the arrest, and he stated that there was one female who was yelling, but he stated that he was concentrating on § 87(2)(b) and did not see her and could not recall what she had said. PO Warren never spoke with any civilians at the scene. PO Warren was not aware of any officers at the scene speaking with civilians.

§ 87(2)(b) was then placed in the transport vehicle by PO Warren and he seemed to calm down and was silent. When PO Warren placed § 87(2)(b) into the prisoner van, § 87(2)(b) was calm and he did not resist getting into the van. No force was required to place § 87(2)(b) into the van and PO Warren assisted § 87(2)(b) step up into the vehicle. PO Warren denied that § 87(2)(b) was pushed into the van. At the time that § 87(2)(b) was handcuffed and entering the van he was silent. None of the officers at the scene were speaking with him either and PO Warren did not speak with § 87(2)(b) about what had just happened. § 87(2)(b) was brought back to the 73rd precinct in the van. DT3 Castle was one of the officers in the van, but he did not know who else was in the vehicle. PO Warren returned to the stationhouse in his unmarked car. PO Warren and the prisoner van arrived at the stationhouse at approximately the same time and PO Warren escorted § 87(2)(b) into the stationhouse.

PO Warren performed a search of § 87(2)(b) in front of the desk of the stationhouse and did not recover anything at that time. § 87(2)(b) was compliant during his search in front of the desk, something PO Warren attributed to § 87(2)(b)’s lengthy criminal history. PO Warren additionally stated that § 87(2)(b) “deals crack all of the time.” PO Warren was then asked if he had had any previous interactions with § 87(2)(b) to which he responded, “Not that I recall.” PO Warren was then asked what information PO Warren had that § 87(2)(b) routinely deals crack. PO Warren stated that he could not state this due to his ongoing investigations. PO Warren denied that § 87(2)(b) pushed him or any other officers while being searched and denied saying, “I’m going to hit you,” and, “I could have shot you. I could have kicked your ass because you gave me a hard time outside.”

After the search in front of the desk, SGT Hopkins authorized a strip search, which was then performed in the back of the stationhouse by PO Warren and PO O’Brien, who remained outside of the cell and directed § 87(2)(b) to remove his clothing, never making contact with him. § 87(2)(b) was compliant during the search. PO Warren located the crack cocaine inside of a small pocket within one of the pockets of his trousers. After searching the trousers of § 87(2)(b) and recovering the crack cocaine, PO Warren returned § 87(2)(b)’s trousers to him. The search was then entered in a log book.

PO Warren entered the Family Dollar store because § 87(2)(b) entered the Family Dollar store as PO Warren and PO O’Brien approached him. PO Warren and PO O’Brien followed § 87(2)(b) around the Family Dollar Store because they did not wish to make a scene. The officers made no physical or verbal contact with § 87(2)(b) inside of the store.

PO Robert O’Brien Narcotics Borough Brooklyn North, 73<sup>rd</sup> Precinct Module (Subject Officer)

Since the date of the incident, PO O’Brien has been promoted to the rank of Detective.



PO O'Brien, a § 87(2)(b) old white male, is six feet tall and weighs two hundred and seventy pounds. He has blond hair and blue eyes. PO O'Brien was interviewed at the CCRB on February 6, 2008.

On November 7, 2007, PO O'Brien worked between the hours of 10:00am and 6:30pm. PO O'Brien was assigned to the chase car for narcotics enforcement and was partnered with PO Warren. PO O'Brien wore plainclothes and was assigned to an unmarked motor vehicle. PO O'Brien had no memo book entries relating to this incident. § 87(2)(g)

PO O'Brien was alerted to a hand to hand drug transaction by PO Warren while they were in their unmarked vehicle on § 87(2)(b). PO Warren and PO O'Brien approached the individual identified by PO Warren as the seller, § 87(2)(b). PO O'Brien could not recall if § 87(2)(b) was ever approached inside of a store in the vicinity of where he was observed making the drug transaction. When the officers attempted to gain control of § 87(2)(b)'s hands to place him under arrest, § 87(2)(b) stuck his right hand, the hand PO O'Brien was trying to control, into his waistband. PO O'Brien felt a metallic object in § 87(2)(b)'s right hand at that time and believed that he was in possession of a weapon. § 87(2)(b) resisted the officers' efforts to handcuff him by refusing to give them control of his arms and by making his body rigid.

PO O'Brien denied stating to § 87(2)(b) during the struggle to handcuff him, "If you don't turn around, I'm going to spray you in the face with mace," but stated that it would have been acceptable to do so given § 87(2)(b)'s level of resistance, if they had had a free hand. He did not know if another officer had said it. In order to successfully handcuff § 87(2)(b), PO Warren and PO O'Brien only used physical force to pull § 87(2)(b)'s arms behind his back. Because § 87(2)(b) did not stop resisting after the first handcuff was placed on § 87(2)(b), PO O'Brien found it necessary to pull on the loose handcuff in order to successfully handcuff § 87(2)(b). PO O'Brien clarified that he did not pull the loose handcuff down towards the ground as § 87(2)(b) alleged and that he never ordered § 87(2)(b) to get down on the ground.

Once handcuffed, a box cutter was recovered from § 87(2)(b)'s waistband while on § 87(2)(b). PO O'Brien next saw § 87(2)(b) at the 73<sup>rd</sup> Precinct stationhouse where PO O'Brien participated in the strip-search of § 87(2)(b) in one of the stationhouse's cells. PO Warren and other officers that PO O'Brien could not recall were also present. The only visibility into the cell was through the door to the cell, where the officers stood. PO O'Brien had no recollection of a search occurring at the stationhouse prior to the strip search and did not recall PO Warren saying, "I'm going to hit you," and "I could have shot you, I could have kicked your ass because you gave me a hard time out there."

#### SGT John Hopkins, Narcotics Borough Brooklyn North, 73<sup>rd</sup> Precinct Module

SGT Hopkins, a § 87(2)(b) year old white male, is six feet and one inch tall and weighs two hundred and twenty five pounds. He has brown hair and brown eyes. SGT Hopkins was interviewed at the CCRB on February 7, 2008.

On November 7, 2007, SGT Hopkins worked between the hours of 10:25am and 7:00pm. He was the supervisor for narcotics enforcement and was partnered with PO Warren and PO O'Brien. He was in plainclothes and was assigned to an unmarked gray Jeep. SGT Hopkins noted in his memo book that at 4:45pm he had one individual under arrest at the corner of § 87(2)(b).

§ 87(2)(g)

SGT Hopkins, PO Warren, and PO O'Brien were in an unmarked Jeep. SGT Hopkins was driving and he could not recall how PO Warren and PO O'Brien were positioned in the vehicle. PO Warren observed a hand to hand drug transaction and PO Warren and PO O'Brien exited the vehicle. SGT Hopkins continued driving in order to park the Jeep. He did not observe the hand to hand drug transaction. Once SGT Hopkins parked his Jeep approximately 20 feet past where PO Warren and PO O'Brien exited the vehicle, he exited the vehicle and observed PO Warren and PO O'Brien involved in a struggle with a black male, identified as § 87(2)(b). The officers were ordering § 87(2)(b) who was throwing his arms up in the air, kicking, and cursing, to stop resisting.

SGT Hopkins approached the struggle and engaged § 87(2)(b) from behind, trying to control § 87(2)(b)'s hands. PO Warren warned SGT Hopkins and § 87(2)(b) had a knife and did not observe the knife until after § 87(2)(b) was arrested. During the struggle PO Warren and PO O'Brien were on either side of § 87(2)(b) each controlling an arm, and SGT Hopkins switched between hands assisting

whichever officer most needed help. SGT Hopkins believed that he told § 87(2)(b) “If you don’t turn around, I’m going to spray you in the face with mace.”

Once the first handcuff was placed on § 87(2)(b)’s wrist, there was a delay in getting the second one on. SGT Hopkins stated that only time he or PO Warren or PO O’Brien would have pulled on the handcuff would have been in order to complete the handcuffing of § 87(2)(b) and not to hurt him.

Back at the 73<sup>rd</sup> Precinct stationhouse, SGT Hopkins supervised the processing of the people arrested that day. A normal search of § 87(2)(b) was performed in the stationhouse. SGT Hopkins did not observe § 87(2)(b) push an officer during that search and he did not hear an officer say, “I’m going to hit you,” and, “I could have shot you. I could have kicked your ass because you gave me a hard time outside.” A strip search of § 87(2)(b) was authorized by SGT Hopkins on the grounds that § 87(2)(b) had secreted a weapon on his person and had been observed by officers placing drugs in his pants. Additionally, § 87(2)(b) has a long criminal history including robberies, assaults, and criminal contempt. Also, a search warrant had been executed at § 87(2)(b)’s house recently in search of drugs and he had recently been arrested § 87(2)(b). SGT Hopkins noted his authorization of the strip search in the command log entry for § 87(2)(b)’s arrest by writing, “S/S/A,” for strip search authorized. § 87(2)(b) was alone in his cell and the only way one could look into the cell was from the front, where he and the other officers present observed the search. SGT Hopkins could not recall the other officers present. There was no cell across from the one in which the strip search was conducted.

#### DT3 Christopher Castle, Narcotics Borough Brooklyn North, 73<sup>rd</sup> Precinct Module

DT3 Castle, a § 87(2)(b) year old white male, is six feet and one inch tall and weighs one hundred and seventy five pounds. He has brown hair and blue eyes. He was interviewed at the CCRB on February 29, 2008.

On November 7, 2007, DT3 Castle worked between the hours of 10:27am and 7:00pm. He was assigned to the prisoner van of his narcotics enforcement team and was partnered with DT3 Brian Naughton. He was in plainclothes and was assigned to an unmarked van. DT3 Castle noted in his memo book that at 4:45pm they had one individual under arrest.

DT3 Castle and DT3 Naughton had been in the vicinity of § 87(2)(b) beginning at approximately 4:00pm. At approximately 4:45pm, DT3 Castle and DT3 Naughton got a call to come to the southwest corner of § 87(2)(b). DT3 Castle exited the vehicle and DT3 Naughton remained with the prisoner in the van. DT3 Castle observed § 87(2)(b) struggling with PO Warren, PO O’Brien, and SGT Hopkins by refusing to let them gain control of his hands. DT3 told § 87(2)(b) to stop resisting and used physical force to try and pull § 87(2)(b)’s arms behind him back in order to handcuff him. § 87(2)(b) was not handcuffed right away, but DT3 Castle did not pull on a loose handcuff while the other handcuff was attached to one of § 87(2)(b)’s wrist. DT3 Castle denied saying, “If you don’t turn around, I’m going to spray you in the face with mace.” He stated that he wouldn’t say such a thing, he would just do it. DT3 Castle was told by PO Warren, after § 87(2)(b) was handcuffed, that he had been in possession of a knife and that he had tried to stab members of the field team.

At the stationhouse DT3 Castle did not search § 87(2)(b) and was not present at the later strip search of § 87(2)(b). He was responsible for the other prisoner, who was released from the stationhouse with a summons.

#### DT3 Brian Naughton, Narcotics Borough Brooklyn North, 73<sup>rd</sup> Precinct Module

DT3 Naughton, a § 87(2)(b) year old white male, is six feet and one inch tall and weighs two hundred and forty five pounds. He has red hair and blue eyes. He was interviewed at the CCRB on February 22, 2008.

On November 7, 2007, DT3 Naughton worked between the hours of 10:27am and 7:00pm. He was partnered with DT3 Castle and was assigned to the prisoner van for his narcotics enforcement team. He was in plainclothes and was assigned to an unmarked van. DT3 Naughton did not have any entries in his memo book relating to this incident. § 87(2)(g)

DT3 Naughton stated that when he and DT3 Castle responded to the corner of § 87(2)(b) in response to a radio request that they come to the location, neither of them exited the van as they already had a prisoner inside. § 87(2)(b) was already under arrest and was in the custody of PO Warren and other officers DT3 Naughton could not recall. § 87(2)(b) was placed in the van and following some more enforcement, the team returned to the 73<sup>rd</sup> Precinct stationhouse. DT3 Naughton had no



§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civil Suit

According to the Office of the Comptroller of the City of New York, as of March 27, 2008, neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) had filed notices of claim against the City of New York.

## Conclusions and Recommendations

### Officer Identification

All witness and subject officers in this case admitted to being present for at least part of the incident. The members of the narcotics enforcement field team were identified through officer statements and the tactical plan prepared by SGT Hopkins for November 7, 2007.

### Disputed Facts

§ 87(2)(b), § 87(2)(g)

### Undisputed Facts

It is not disputed that crack cocaine was recovered from § 87(2)(b)'s person at the 73<sup>rd</sup> Precinct stationhouse. It is not disputed that § 87(2)(b) was in possession of a box cutter at the time of his arrest.

### Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

He stated that when stopped inside of the Family Dollar store, he informed the officers that he possessed a box cutter and that the officers felt it when § 87(2)(b) consented to a frisk, but that the officers did not attempt to remove the weapon from his person prior to attempting to place him under arrest. According to § 87(2)(b) once an officer began to attempt to arrest him, with the knowledge that § 87(2)(b) possessed a weapon, the only force the officer used was to pull the loose bracelet of handcuffs attached to one of § 87(2)(b)'s wrists down towards the ground. § 87(2)(g). Additionally, § 87(2)(b) stated that while one officer struggled to arrest him, two other officers stood to the side and watched without providing assistance. § 87(2)(g).

When asked if he had spoken with anyone prior to going to the § 87(2)(b) supermarket, he initially stated that he did not. Only after he admitted to being in possession of crack cocaine at the time of his arrest and after being asked how he came to possess the drugs did he admit that he had purchased the crack cocaine while en route from § 87(2)(b)'s home to the § 87(2)(b) grocery store. Additionally, § 87(2)(b) stated during his interview that he had only armed robbery and assault charges on his criminal record, neglecting to mention that he had been arrested § 87(2)(b) prior to this incident by other officers of Narcotics Borough Brooklyn North in connection with the execution of a search warrant which recovered narcotics.

§ 87(2)(b), § 87(2)(g)



**Allegation F: In front of § 87(2)(b) in Brooklyn, DT3 Christopher Castle used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that one officer, identified as PO Warren, placed one handcuff on one of § 87(2)(b)'s wrists, and tugged on the loose bracelet of the handcuffs, pulling it down to the ground. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-11 mandates that officers use only the minimal amount of force necessary to take a suspect into custody. PO Warren, PO O'Brien, SGT Hopkins, and DT3 Castle all stated that § 87(2)(b) was resisting their efforts to handcuff him. § 87(2)(b), § 87(2)(g)

**Allegation G: In front of § 87(2)(b) in Brooklyn, SGT John Hopkins threatened § 87(2)(b) with the use of pepper spray**

§ 87(2)(b) alleged that an officer, determined to be PO Warren stated to him, "If you don't turn around, I'm going to spray you in the face with mace." SGT Hopkins admitted to doing so while struggling to handcuff § 87(2)(b) along with PO Warren, PO O'Brien, and DT3 Castle. In *PD V. Caesar*, Administrative Law Judge Ray Fleischhacker stated that "mace or pepper spray 'may be used when a member reasonably believes it necessary to effect an arrest of a resisting suspect.'" § 87(2)(b), § 87(2)(g)

**Allegation H: Inside of the 73<sup>rd</sup> Precinct stationhouse, PO William Warren threatened § 87(2)(b) with the use of force**

**Allegation I: Inside of the 73<sup>rd</sup> Precinct stationhouse, PO William Warren spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(b) alleged that when being searched by an officer, determined to be PO Warren, he believed PO Warren was attempting to touch his anus through his pants. In response, § 87(2)(b) stated that he pushed PO Warren away with his body and that PO Warren responded by saying, "I'm going to hit you," and, "I could have shot you. I could have kicked your ass because you gave me a hard time outside." § 87(2)(b), § 87(2)(g)

**Allegation J: Inside of the 73<sup>rd</sup> Precinct stationhouse, SGT John Hopkins authorized the strip search of § 87(2)(b)**

§ 87(2)(b) alleged that he was strip-searched in a rear cell of the 73<sup>rd</sup> Precinct stationhouse. He stated that PO Warren, who observed the strip-search, did not make physical contact with him and that he could not see any other prisoners in the cell area from his cell. Patrol Guide Procedure 208-05 states that a strip search may be authorized in a situation in which "the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person in the clothing in such a manner that they may not be discovered by the previous search methods." SGT Hopkins stated that he did authorize the strip search of § 87(2)(b) on the grounds that § 87(2)(b) had secreted a weapon on his person and had been observed by an officer placing drugs in his pants. In addition, § 87(2)(b) had a lengthy criminal history of robberies, assaults, and criminal contempt. A search warrant in pursuit of narcotics had recently been executed at § 87(2)(b)'s home. In the command log entry for § 87(2)(b)'s arrest, SGT Hopkins documented the strip search and that it yielded positive results. § 87(2)(b), § 87(2)(g)

Investigator: Robert Tanner

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: